

REMARKS/ARGUMENTS

Applicant responds herein to the Office Action dated August 20, 2008.

Claims 1-14 are in the application.

The Examiner objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. Specifically the Examiner noted that there was no antecedent basis for “signal generating means”, “controlling means”, “timing means”, “hazard detecting means” and the limitation of extracting molecules from the living cells. In response thereto, the claims have been amended to delete or change all “means” to elements or structural members as appropriate. Accordingly, there is a signal generator 3 described at page 5, line 5. A controlling element is embodied as blocks 100-180 and described as such at page 9, lines 23-24. A timing element 110 is described at page 6, line 23. A hazard detecting element 120 and 130 is described at page 13, lines 25-32. Extracting molecules from living cells is described in the paragraph at page 12, line 5.

The Examiner objected to claims 1 and 4 because of spelling errors. These have been corrected, with the above amendment. Spelling errors in Figure 2 have also been corrected with the appended Replacement Drawing Sheet

Claims 1-11 were rejected under 35 USC 112, second paragraph, as being indefinite. The Examiner noted that the claims were drafted using “means for” language but without structural elements being clearly described, as required. In response thereto the claims have been amended to, where appropriate, delete or replace all references to “means” with the structural terminology of “elements” configured to perform the specified operations.

Claims 12-14 were rejected under 35 USC 112, second paragraph, as being indefinite. Claims 12-14 were further rejected under 35 USC 101 since they recite use without steps and how the use is to be practiced. In response thereto, claims 12-14 have been amended to be method claims, with specific method steps, as required under 35 USC 112 and 101 as cited by the Examiner.

Claims 1-11, 13 and 14 were rejected under 35 USC 102(b) as anticipated by or in the alternative, under 35 USC 103(a), as obvious over applicant’s (Miklavcic) publication WO 01/815333. It is primarily the Examiner’s position that the Miklavcic’s device (while not specifically disclosing the operation of the presently claimed device) is capable of such operation

with the stimulating signal parameters of claim 1, and with the parameters of control, calculations, etc., as set forth in the dependent claims. In response thereto, independent claim 1 and dependent claims 2-14 have been amended to specify that the claimed device is specifically configured to operate with the claimed parameters. The cited Miklavcic reference does not disclose such set specific operational configurations, which are effectively structural limitations, and accordingly does not anticipate claim 1 or any of the other claims. In addition, there is no teaching or suggestion for anyone skilled in the art to configure the device elements with the claimed parameters, absent the disclosure of the present disclosure.

The prior art itself also teaches away from the present claim limitations. Thus Miklavcic at page 5, lines 2-7 states:

"... When device 1 is activated, a first block 100 determines the impedance value between electrodes 5. More specifically, the impedance $Z(w)$ is measured in known manner by measuring system 7, which may determine one or several of the following parameters for instance the absolute impedance value $|Z|$ (I, the real impedance part Z_r , the imaginary part jZ_o , or angle $\alpha = \arctg(Z_o/Z_r)$..."

As seen in Figure 3 of the reference, the value of the measured impedance $Z(w)$ is used to regulate the amplitude of some (pulses if1) of the stimulating signal. The reference further states at page 7, lines 13-25:

"... Further pulses If may comprise: rectangular first further pulses If1, the amplitude of which is closed-loop adjustable on the basis of the instantaneous measured impedance value; more specifically, the amplitude of first further pulses If1 decreases as impedance falls, and increases as impedance rises or remains constant; rectangular second further pulses If2 of fixed amplitude; more specifically, pulses If2 have a lower amplitude and a greater time width than first pulses If1; and, a series of pulses comprising first further pulses If1 and second further pulses If2..."

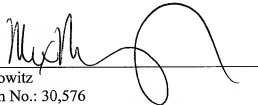
Accordingly, the reference simply discloses that, in order to measure the value of the impedance $Z(w)$ (the ratio between the voltage V_p applied to the electrodes and the current I_e supplied to the electrodes) regulation of the amplitude of the stimulating signal is effected in accordance with the measured value. This is in contrast to the present claim 1 wherein the

stimulating signal is configured to be regulated based on **only** the instantaneous value of the initial part of the waveform of the ratio GT between the current I_e supplied by the electrodes and the voltage V_p applied to the electrodes. As a result, the limitations of claim 1 provide the stimulating signal being dependent only on the shape of the initial part of the waveform of GT . In the cited reference the stimulating signal is always dependent on the value (not the shape) of the impedance which is the inverse of the impedance of the reference. There is thus neither disclosure, teaching or even suggestion of the presently claimed invention. Claim 1 is thus allowable over the cited Miklavcic reference. Claims 2-14, dependent on claim 1, are similarly allowable for at least the same reasons.

Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims and pass this case to issue.

THIS CORRESPONDENCE IS
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Max Moskowitz', is written over a horizontal line.

Max Moskowitz
Registration No.: 30,576
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700

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